



PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) JRL-4208-43 Confirmation No. 7385
Application Number	Filed	
10/583,962	June 21, 2006	
First Named Inventor		
FODOR		
Art Unit	Examiner	
2461	Beyen, Zewdu A.	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
 Note: No more than five (5) pages may be provided.

I am the

☐ Applicant/Inventor

☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

☒ Attorney or agent of record 33,149
(Reg. No.)

☐ Attorney or agent acting under 37CFR 1.34.
 Registration number if acting under 37 C.F.R. § 1.34 _____

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August 24, 2010
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

☒ *Total of 1 form/s are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

FODOR ET AL.

Appl. No. 10/583,962

Filed: June 21, 2006

For: CONTROL OF MOBILE PACKET STREAMS



Atty. Ref.: 4208-43; Confirmation No. 7385

TC/A.U. 2461

Examiner: Beyen, Zewdu A.

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August 24, 2010

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Clear Error #1: The Specification Satisfies 35 U.S.C. §112, First Paragraph. The final action alleges that the specification fails to comply with the written description requirement. Specifically, the Examiner contends that language in the preamble of the independent claims, “where each mobile user data packet flow is separate and different from session set-up messages sent with IP layer control signaling and/or session layer control signaling,” was not “described in the specification.” Applicants disagree because there is ample support in the original application for this added language. For example, page 4, line 28 states “by separating the user data plane from the IP control plane” and page 6, lines 13-19 states:

According to the invention, the IP layer 5 is divided into an IP control plane 4 and a user data plane 6, and an IP control signaling path is made independent of the user data path. The IP control signaling path and the IP control plane will follow the IP control signaling path illustrated by the double headed arrow 9. The IP layer 6 is correspondingly changed and will transport user data on the IP user data plane. The user data flow is shown with broad arrows 10 and passes middle boxes 13, 14 and a plurality of other

nodes schematically shown at NO on its way between terminals 1 and 3.

Figures 2, 3, and 4 also show separate and distinct IP control planes and IP control signaling from IP user plane and user data packet flow information. Thus, there is sufficient evidence in the application as originally filed that demonstrates that the inventors were in possession of the claim language quoted above.

Clear Error #2: The Primary Obviousness Rejection Lacks Claim Elements. Mitchell describes discovering and registering middleboxes in response to a call set-up message. For the middlebox “binding” referred to in [0062], the call servers 18 request the middlebox to set up a voice packet path from terminal A, and in response, the middlebox replies with a public address and port to which packets from terminal B to terminal A should be sent.

Page 5 of the final action admits that Mitchell lacks a teaching of multiple elements recited in claim 1 including for example: (1) middlebox registration at a midcom agent (mapped onto call servers/proxies 18 in Figure 6) or at middleboxes (mapped onto middleboxes 10, 11) (see step b of claim 1), (2) “the common, IP-based control plane is separate from the IP-based user plane,” (3) “each mobile user data packet flow is separate and different from session set up messages sent with IP layer control signaling and/or session layer control signaling.”

Before addressing these three admitted deficiencies, Applicants point out that the data flow/bearer B in Mitchell does not register its presence in each middle box as recited in step b of claim 1: “each mobile user data packet flow registering its presence in each middlebox it encounters on its way from its source to its destination in the IP based user plane.” In fact, the bearer connection B, which Applicants believe corresponds to the user data flow between the middleboxes 1 and 2 and users A and B in Figure 6, is not described in much detail by Mitchell outside of paragraph [0046]. Ultimately, Mitchell does not disclose how middlebox registration

handles mobile user data packet flows. This fourth deficiency is not addressed in the final rejection.

For the admitted missing “registration at midcom agent” claim feature, the Examiner applies Das at [0031] which teaches a mobile registering with a foreign agent so the foreign agent can be used as a care-of address for sending packets to the mobile or the mobile can use a collocated address to register with its home agent using mobile IP registration. Applicants assume from the response on page 25 of the final action, “Examiner interpreting midcom agent as management entity,” that the Examiner is likening Das’s foreign or home agent to a midcom agent. In contrast to what is claimed, a mobile node is not a middlebox node (this is evident from Figure 6 in Mitchell and Figure 2 in the instant application for example).

It is also important to remember that claim 1 is not simply reciting any node registering with another management node. Rather, step c in claim 1 specifically recites: “in response to step b [data flow registration in each middlebox], each middlebox in the IP based user plane registering itself and the identities of mobile user data packet flows it handles in the IP based user plane at a midcom agent in the common, IP-based control plane using an extended midcom signalling protocol.” Das does not teach the claimed middlebox or midcom agent.

Ultimately, Mitchell + Das do not disclose registering mobile user data flows that move between different middleboxes so that movement of a mobile terminal or a moving network can be accommodated. In claim 1, registering the mobile user data flow identities at a midcom agent together with the identity of the middlebox that the flow traverses allows the flow to be bound to a specific flow control process in the midcom agent even though the flow may move between different middleboxes during a call. This is not taught in Mitchell + Das.

In addition, and as recognized by the Examiner, the Mitchell-Das combination is based on a faulty assumption: that a call set-up message from terminal A to middlebox 1 and from

middlebox 1 to the call server 18 (midcom agent) in Mitchell can be mapped to the claimed mobile user data packet flow. But claim 1 recites that a mobile user data packet flow in the user plane is different from and cannot be mapped to session set up messages sent in the control plane with IP layer control signaling and/or session layer control signaling.

The Examiner points to newly-cited Shew as teaching an IP based control plane separate from an IP base user plane. But claim 1 is not reciting an IP based control plane separate from an IP base user plane in a vacuum. The Shew reference is a general routing reference and the Examiner makes no attempt to identify where Shew teaches middleboxes, midcom agents, and the interactions between them and mobile user data packet flows. The piece-meal approach to the rejection is evident and improper. The pre-appeal panel is reminded that each claim and each reference must be considered as a whole.

The Examiner further argues that although the combination of Mitchell, Das, and Shew does not teach that user data packet flow is separate and different from session set-up messages sent with the IP layer control signaling and/or layer control signaling, this feature is taught by Fieschi. Fieschi is another general routing reference that teaches a method of “self-learning” for a switching node. The Examiner never explains how Fieschi’s generating a switch header including a source identification field, a destination identification field, and a temporary label identifying the flow of data in response to its first data frame (as described in Fieschi’s abstract identified by the Examiner) teaches that a user data packet flow is separate and different from session set-up messages sent with IP layer control signaling and/or layer control signaling.

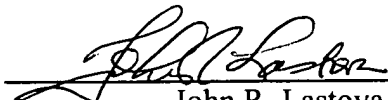
Clear Error #3: The Combination Is Improper. The Examiner tries to justify the combination of Mitchell, Das, Shew, and Fieschi arguing (1) that modifying Mitchell to include Das’s mobile IP foreign agent somehow allows Mitchell “to efficiently manage packet flow,” that (2) modifying Mitchell + Das to use Shew’s separate control and bearer planes also

somehow allows Mitchell + Das to again to “efficiently manage packet flow,” and that (3) modifying Mitchell + Das + Shew to use Fieschi’s generated switch header allows Mitchell + Das + Shew to still again to “efficiently manage packet flow.” But the Examiner never explains why or how these modifications result in this alleged benefit, which is oddly the same for all three modifications.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art. See, e.g., *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007); MPEP §2143.01.III. The Examiner never explains how Mitchell would actually be modified with each of the teachings of Das, Shew, and Fieschi—none of which describe middleboxes and midcom agents. The many proposed modifications have not been demonstrated in the final action to be feasible or even explained how they might be done. Nor is there any explanation as to how their results are predictable. No evidence or explanation is provided as to how each of these three references allows Mitchell’s system to more “efficiently manage the packet flow.”

Ultimately, the fact that the Examiner strains to make the primary rejection using four references that are also largely unrelated is another significant indicia of non-obviousness. The final rejection should be withdrawn and the case allowed.

Respectfully submitted,
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